

1 **PEACE OFFICER STANDARDS AND TRAINING**

2 **AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5

6 **LONG TITLE**

7 **General Description:**

8 This bill amends the responsibilities of the Peace Officer Standards and Training
9 Council regarding disciplinary action against peace officers and dispatchers.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires the POST Council to decide on sanctions to be imposed upon peace
13 officers and dispatchers;
14 ▶ allows for the issuance of a Letter of Caution as a disciplinary measure;
15 ▶ requires the POST Council to accept an administrative law judge's findings and
16 conclusions; and
17 ▶ requires the division to be notified upon the separation of a peace officer or
18 dispatcher who is under investigation.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **53-6-107**, as last amended by Laws of Utah 2002, Chapter 250

26 **53-6-211**, as last amended by Laws of Utah 2013, Chapters 115 and 269

27 **53-6-309**, as repealed and reenacted by Laws of Utah 2011, Chapter 258

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **53-6-107** is amended to read:

31 **53-6-107. General duties of council.**

- (1) The council shall:
- (a) advise the director regarding:
- (i) the approval, certification, or revocation of certification of any certified academy established in the state;
- ~~[(ii) the refusal, suspension, or revocation of certification of a peace officer;]~~
- ~~[(iii)]~~ (ii) minimum courses of study, attendance requirements, and the equipment and facilities to be required at a certified academy;
- ~~[(iv)]~~ (iii) minimum qualifications for instructors at a certified academy;
- ~~[(v)]~~ (iv) the minimum basic training requirements that peace officers shall complete before receiving certification;
- ~~[(vi)]~~ (v) the minimum basic training requirements that dispatchers shall complete before receiving certification; and
- ~~[(vii)]~~ (vi) categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements for the categories or classifications;
- (b) recommend that studies, surveys, or reports, or all of them be made by the director concerning the implementation of the objectives and purposes of this chapter;
- (c) make recommendations and reports to the commissioner and governor from time to time; ~~[and]~~
- (d) perform other acts as necessary to carry out the duties of the council in this chapter~~[-]; and~~
- (e) choose from the sanctions to be imposed against certified peace officers as provided in Section 53-6-211, and dispatchers as provided in Section 53-6-309.
- (2) The council may approve special function officers for membership in the Public Safety Retirement System in accordance with Sections 49-14-201 and 49-15-201.
- Section 2. Section **53-6-211** is amended to read:
- 53-6-211. Suspension or revocation of certification -- Right to a hearing --**
- Grounds -- Notice to employer -- Reporting -- Judicial appeal.**
- (1) The council has the authority to issue a Letter of Caution, or suspend or revoke the certification of a peace officer, if the peace officer:
- (a) willfully falsifies any information to obtain certification;
- (b) has any physical or mental disability affecting the peace officer's ability to perform

63 duties;

64 (c) is addicted to alcohol or any controlled substance, unless the peace officer reports
65 the addiction to the employer and to the director as part of a departmental early intervention
66 process;

67 (d) engages in conduct [~~which is~~] constituting a state or federal criminal offense, but
68 not including a traffic offense that is a class C misdemeanor or infraction;

69 (e) refuses to respond, or fails to respond truthfully, to questions after having been
70 issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

71 (f) engages in sexual conduct while on duty; or

72 (g) is certified as a law enforcement peace officer, as defined in Section [~~53-13-103~~]
73 53-13-102, and is unable to possess a firearm under state or federal law.

74 (2) The council may not issue a Letter of Caution, or suspend or revoke the
75 certification of a peace officer for a violation of a law enforcement agency's policies, general
76 orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

77 (3) (a) The division is responsible for investigating officers who are alleged to have
78 engaged in conduct in violation of Subsection (1).

79 (b) The division shall initiate all adjudicative proceedings under this section by
80 providing to the peace officer involved notice and an opportunity for a hearing before an
81 administrative law judge.

82 (c) All adjudicative proceedings under this section are civil actions, notwithstanding
83 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted
84 criminally.

85 (d) (i) The burden of proof on the division in an adjudicative proceeding under this
86 section is by clear and convincing evidence.

87 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of
88 proof to establish the affirmative defense by a preponderance of the evidence.

89 (e) If the administrative law judge issues findings of fact and conclusions of law stating
90 there is sufficient evidence to demonstrate that the officer engaged in conduct that is in
91 violation of Subsection (1), the division shall present the finding and conclusions issued by the
92 administrative law judge to the council.

93 (f) The division shall notify the chief, sheriff, or administrative officer of the police

94 agency which employs the involved peace officer of the investigation and shall provide any
95 information or comments concerning the peace officer received from that agency regarding the
96 peace officer to the council before a Letter of Caution is issued, or a peace officer's certification
97 may be suspended or revoked.

98 (g) If the administrative law judge finds that there is insufficient evidence to
99 demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall
100 dismiss the adjudicative proceeding.

101 (4) (a) The council shall ~~[review]~~:

102 (i) accept the administrative law judge's findings of fact and conclusions of law, and
103 the information concerning the peace officer provided by the officer's employing agency; and
104 ~~[determine]~~

105 (ii) choose whether to issue a Letter of Caution, or suspend or revoke the officer's
106 certification.

107 (b) Before making a decision, the council may consider aggravating and mitigating
108 circumstances.

109 ~~[(b)]~~ (c) A member of the council shall recuse him or herself from consideration of an
110 issue that is before the council if the council member:

111 (i) has a personal bias for or against the officer;

112 (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain
113 or lose some benefit from the outcome; or

114 (iii) employs, supervises, or works for the same law enforcement agency as the officer
115 whose case is before the council.

116 (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not
117 preclude suspension or revocation of a peace officer's certification by the council if the peace
118 officer was terminated for any of the reasons under Subsection (1).

119 (b) Employment by another agency, or reinstatement of a peace officer by the original
120 employing agency after termination by that agency, whether the termination was voluntary or
121 involuntary, does not preclude suspension or revocation of a peace officer's certification by the
122 council if the peace officer was terminated for any of the reasons under Subsection (1).

123 (6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is
124 made aware of an allegation against a peace officer employed by that agency that involves

conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

(b) If a peace officer who is the subject of an internal or administrative investigation that involves conduct in violation of Subsection (1) resigns, retires, or otherwise separates from the investigating law enforcement agency before the conclusion of the investigation, the chief, sheriff, or administrative officer of that law enforcement agency shall report the allegations and any investigation results to the division.

(7) The council's issuance of a Letter of Caution, or suspension or revocation of an officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4, Judicial Review.

Section 3. Section **53-6-309** is amended to read:

53-6-309. Suspension or revocation of certification -- Right to a hearing --

Grounds -- Notice to employer -- Reporting.

(1) The council has the authority to issue a Letter of Caution, or suspend or revoke the certification of a dispatcher, if the dispatcher:

(a) willfully falsifies any information to obtain certification;

(b) has any physical or mental disability affecting the dispatcher's ability to perform duties;

(c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the addiction to the employer and to the director as part of a departmental early intervention process;

(d) engages in conduct [~~that is~~] constituting a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;

(e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning based on Garrity v. New Jersey, 385 U.S. 493 (1967); or

(f) engages in sexual conduct while on duty.

(2) The council may not issue a Letter of Caution, or suspend or revoke the certification of a dispatcher for a violation of the employing agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

(3) (a) The division is responsible for investigating dispatchers who are alleged to have engaged in conduct in violation of Subsection (1).

(b) The division shall initiate all adjudicative proceedings under this section by providing to the dispatcher involved notice and an opportunity for a hearing before an administrative law judge.

(c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.

(d) (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.

(ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof to establish the affirmative defense by a preponderance of the evidence.

(e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in violation of Subsection (1), the division shall present the findings and conclusions issued by the administrative law judge to the council.

(f) The division shall notify the agency that employs the involved dispatcher of the investigation and shall provide any information or comments concerning the dispatcher received from that agency regarding the dispatcher to the council before a Letter of Caution is issued, or a dispatcher's certification may be suspended or revoked.

(g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

(4) (a) The council shall ~~[review]~~:

(i) accept the administrative law judge's findings of fact and conclusions of law and the information concerning the dispatcher provided by the dispatcher's employing agency; and ~~[determine]~~

(ii) choose whether to issue a Letter of Caution, or suspend or revoke the dispatcher's certification.

(b) Before making a decision, the council may consider aggravating and mitigating circumstances.

~~(b)~~ (c) A council member shall recuse himself or herself from consideration of an issue that is before the council if the council member:

187 (i) has a personal bias for or against the dispatcher;

188 (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain
189 or lose some benefit from the outcome; or

190 (iii) employs, supervises, or works for the same agency as the dispatcher whose case is
191 before the council.

192 (5) (a) Termination of a dispatcher, whether voluntary or involuntary, does not
193 preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher
194 was terminated for any of the reasons under Subsection (1).

195 (b) Employment by another agency, or reinstatement of a dispatcher by the original
196 employing agency after termination by that agency, whether the termination was voluntary or
197 involuntary, does not preclude suspension or revocation of a dispatcher's certification by the
198 council if the dispatcher was terminated for any of the reasons under Subsection (1).

199 (6) (a) An agency that is made aware of an allegation against a dispatcher employed by
200 that agency that involves conduct in violation of Subsection (1) shall investigate the allegation
201 and report to the division if the allegation is found to be true.

202 (b) If a dispatcher who is the subject of an internal or administrative investigation that
203 involves conduct in violation of Subsection (1) resigns, retires, or otherwise separates from the
204 investigating law enforcement agency before the conclusion of the investigation, the agency
205 shall report the allegations and any investigation results to the division.

206 (7) The council's issuance of a Letter of Caution, or suspension or revocation of an
207 officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4,
208 Judicial Review.